IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 343 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SALIMBHAI OSMANBHAI SINDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 343 of 2001

MS KRISHNA U MISHRA for Petitioner No. 1

MR KT DAVE APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 24/08/2001

ORAL JUDGEMENT

1. In this writ petition filed under Article 226 of the Constitution, the prayer made by the petitioner is for quashing and setting aside the externment order dated December 30, 2000 Annexure B passed by the Sub-Divisional Magistrate, Gondal against the petitioner under section

56 of the Bombay Police Act ('the Act' for short) externing the petitioner from the contiguous Districts of Rajkot, Junagadh, Porbandar and Jamnagar for a period of one year and the order dated March 19, 2001 passed by the appellate authority, confirming the same.

2. The brief facts are that the show cause notice Annexure A to the petition under Section 59 of the Act was issued to the petitioner to show cause as to why he should not be externed for a period of two years from the aforesaid districts subject to the satisfaction arrived at by the externing authority on the basis of the three criminal cases registered against the petitioner, the details of which are given in the show cause notice. Besides this, the externing authority has also considered the statements of witnesses recorded by the police and on the basis of those statements, the externing authority came to the conclusion that the petitioner was indulging in anti social activities and under threat and coercion he is collecting money from the people of Upleta town and thereby causing harassment to the people in general.

3. In response to the show cause notice, the petitioner appeared and filed his defence. The externing authority after considering the material on record passed the order of externment at Annexure B against the petitioner.

4. The petitioner preferred appeal before the appellate authority which was dismissed by the appellate authority, as per order at Annexure D to the petition.

5. Ms. Mishra, learned advocate for the petitioner contended that show cause notice as well as the orders passed by the two authorities suffer from non-application of mind. It is contended that in the show cause notice the authority has stated that three cases are registered in Upleta Police Station against the petitioner but both the authorities have not appreciated the fact that in two cases the petitioner has been acquitted and in one case compromise has been arrived at in the competent court. Lastly it is contended that the orders are unjust, illegal, arbitrary and unconstitutional and suffer from non-application of mind and deserve to be and set aside.

6. Mr. Dave, learned APP, has supported the orders passed by both the authorities,i.e., the externing authority as well as the appellate authority, and contended that the petitioner is a hardened criminal involved in anti social activities and, therefore, the authority has externed him for one year from the

districts mentioned above.

7. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition.

8. It may be stated that the authorities have taken the decision to extern the petitioner on the basis of the three criminal cases registered against him in the year 1997 whereas the externment order was passed on December 30, 2000 and there is no material with the authorities against the petitioner showing his involvement in any criminal activities or anti-social activities between the period from 1997 to December 30, 2000. The order is silent about the activities of the petitioner from 1997 till the date of order of externment dated December 30, 2000 and, therefore, on the basis of stale material of 1997 the order passed by the externing authority can be said to be an order passed without application of mind which deserves to be quashed and set aside.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order of externment dated December 30, 2000 passed by the Sub-Divisional Magistrate, Gondal at Annexure B and the order dated March 19, 2001 passed by the appellate authority at Annexure D are quashed and set aside. Rule is made absolute. Direct service is permitted.

24.8.2001. (A.M. Kapadia, J.)

(karan)